

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND**

Park Overlook Homeowners Association,
Complainant

v.

Case **#16-09**
February 19, 2010

Wendal and Arleen Hall,
Respondents

JUDGMENT BY DEFAULT

This dispute came before a panel of the Commission on Complainant's application for a default judgment against Respondents.

The panel has reviewed the record and makes the following findings of fact and conclusions of law.

Findings of Fact

1. The Complainant is a homeowners association within the meaning of Section 11B-101 of the Real Property Article of the Code of Maryland, and its Covenants are filed in the land records of Montgomery County, Maryland.

2. The Respondents own a lot subject to the covenants of the Complainant, located at 7724 Keyport Terrace, Derwood, Maryland.

3. Some time in the summer of 2008, the Respondents repainted the front door and the flashing over, and the panels of, the front bay window without having applied for and obtained approval from Complainant for this change. All were painted a medium blue, to which the Complainant objected as the color used did not comply with the approved color scheme for the community. On September 2, 2008, and again on October 7, 2008, Complainant wrote Respondents to notify them of the alleged violation and to request that they either restore the original colors or apply for and obtain approval for other colors. Respondents requested a hearing with the Complainant's Board of Directors, which gave them notice on November 4, 2008, of a hearing to be held November 20, 2008. The Board held the hearing and on November 26, 2008, notified the Respondents that they must restore the house to its original colors, and that if they disagreed they had the right to appeal the decision to this Commission.

4. Respondents neither appealed the decision to this Commission nor did they comply with the Board's decision. On March 30 2009, the Complainant filed this dispute with the Commission seeking an order to compel the Respondents to

change the paint colors on their home. The Commission staff sent a copy of this complaint, along with a copy of Chapter 10B of the Montgomery County Code and other relevant information, to the Respondents on March 30, 2009.

5. Respondents did not file any reply to the complaint, and on June 18, 2009, the Commission staff notified the Complainant that it could initiate the procedures for a default judgment. Staff sent a copy of that letter with a copy of the Commission's *Default Judgment Procedures* to the Respondents.

6. On September 21, 2009, the Complainant filed a request for an order of default against the Respondents. On September 24, 2009, the Commission staff wrote to both parties to advise them that the request for entry of a default would be considered at the Commission's next meeting on October 7, 2009, and informed both parties of their rights to file written comments. Respondents filed no comments.

7. On October 7, 2009, the Commission granted the request for an order of default, and on October 8, 2009, the staff sent an order to Respondents to show cause within 30 days why a final judgment should not be entered against them. Staff sent this letter by certified and regular U.S. Mail and Respondents signed for the certified letter on October 10, 2009. Respondents did not reply to the show cause order.

8. On January 26, 2010, Complainant filed its request for entry of a default judgment against Respondents. Complainant stated that under its rules the approved color of the front door is "Benjamin Moore Hale Navy Blue" and the approved color for the flashing and panels of the bay window is "Old Colonial Red," and it also stated that Respondents had made no changes to the paint colors since the dispute was filed.

10. Article V of Complainant's Declaration of Covenants (Commission Exhibit 1 at 13), provides that "[n]o building, storage shed, fence wall or other structure, *or exterior painting*, shall be commenced. . . upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications. . .of the same have been submitted to and approved in writing. . . by the Board of Directors. . ." (Emphasis added.)

Conclusions of Law

1. The Commission has jurisdiction of this dispute pursuant to Section 10B-8(3)(A)(i) of the Montgomery County Code.

2. The Commission has jurisdiction over the Respondents.

3. The Respondent is subject to the Complainant's governing documents and rules and regulations. These documents prohibit the making of any

changes to the lot, or the house, including changes to the exterior paint, without the advance approval of the Complainant. The panel finds that the Respondents violated these rules by altering the paint colors of their home without approval. The panel further finds that the paint colors used by Respondents also violated the community rules because they were not consistent with the approved color scheme.

4. The panel further finds that Complainant is entitled to be reimbursed for its filing fee in this matter by Respondents.

ORDER

It is, therefore, this 19th day of February, 2010, by the Commission on Common Ownership Communities of Montgomery County, Maryland,

ORDERED that the Respondents, Wendal and Arleen Hall, shall:

1. within 30 days of the date of this Order, repaint the front of their home in the original colors as specified in Finding of Fact No. 8, above; and

2. within 30 days after the date of this Order, pay to the Complainant the sum of \$50.00 as its filing fee in this matter within 30 days after the date of this Judgment.

And it is further:

ORDERED that should Respondent fail to comply with this Order, the Complainant may collect the sum due by any manner authorized by its association documents or by law.

Any party aggrieved by this decision may file an appeal to the Circuit Court of Montgomery County, Maryland within 30 days from the date of this decision pursuant to the Maryland Rules of Procedure governing appeals from administrative decisions.

Commissioners Dubin and Garcia concur.

COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

By: _____

Elizabeth Molloy, Panel Chair
February 19, 2010

cc: Jeannette Broadwater, Manager, Park Overlook HOA